IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 22ND OCTOBER 2007 / 30TH ASWINA 1929

OP.No. 4186 of 2000(W)

PETITIONER:

M/S.S.NATESAN & SONS,
BIG BAZAR, KOZHIKODE,
REP. BY ITS PARTNER,
S.N.SHANMUGHA SUNDARAM.

BY ADV. SRI.N.MURALEEDHARAN NAIR
SRI.V.K.SHAMUSUDHEEN

RESPONDENTS:
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1. ASSISTANT COMMISSIONER (ASSESSMENT),
SALES TAX SPECIAL CIRCLE, KOZHIKODE.

2. DEPUTY COMMISSIONER, COMMERCIAL
TAXES, KOZHIKODE.

3. COMMISSIONER OF COMMERCIAL TAXES,
TRIVANDRUM.

4. DEPUTY TAHSILDAR(RR), KOZHIKODE.

BY GOVERNMENT PLEADER SRI.V.TEKCHAND

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 22/10/2007, THE COURT ON 22/10/2007 DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO.6836/2000IN O.P. NO.4186/2000

DISMISSED:

22.10.2007 SD/-(THOTTATHIL B. RADHAKRISHNAN, JUDGE.)

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF THE ORDER OF R1 DT.29.12.1997.

P2: TRUE COPY OF APPELLATE ORDER PASSED BY R2 DT.7.3.1998.

P3: TRUE COPY OF ORDER OF R2 DT.30.4.1999.

P4: TRUE COPY OF THE REVISION PETITION FILED BY THE PETITIONER BEFORE R3 DT.24.7.1999.

P5: TRUE COPY OF CERTIFICATE OF DELIVERY DT.29.1.2000 ISSUED BY THE MANAGER, CALICUT CUSTOMER CARE CENTRE, CALICUT-673 001.

P6: TRUE COPY OF ORDER OF R3 DT.3.1.2000.

P7: TRUE COPY OF DEMAND NOTICE ISSUED BY R4 U/S.7 OF THE R.R. ACT DT.5.11.1999.

P8: TRUE COPY OF DEMAND NOTICE ISSUED BY R4 U/S.34 OF THE RR ACT DT.5.11.1999.

TRUE COPY

P.A. TO JUDGE

THOTTATHIL B. RADHAKRISHNAN, J.

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O.P. No.4186 of 2000

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Dated this the 22nd day of October, 2007.

JUDGMENT

The petitioner faces concurrent orders imposing penalty under Section 45A of the KGST Act repelling his first and second revisions. It has been held that he was given enough of opportunities to rebut the findings of the initial authority and that, having regard to the contents of the dealer's statement dated 15.10.1997 he had only tried to drag on the matter by seeking further adjournments to place further evidence and detailed objections. I may at once notice that the statement of the dealer on 15.10.1997 was his immediate statement that followed the seizure of accounts from his premises on 14.10.1997 which were at variance with the entries in the day books regarding movement of jaggery from Tamil Nadu to the State of Kerala. It is true that the variance is on the price component and not on the quantity.

2. The authorities have also concluded on the question of mens rea by taking the view that the petitioner, a wholesale dealer imports the goods from outside the State and sells them locally showed a nominal value in the sale bill and that on verification of the slips Nos.31 to 34 recovered at the

time of inspection, it was revealed that the actual market value of jaggery for the year was much higher than the sale value quoted by the petitioner. The statutory authorities thus concluded that the petitioner had suppressed the major portion of sale value of jaggery thereby evading tax legitimately due to the State.

3. Learned counsel for the petitioner argued among other things that the variation noticed was only in the price paid and not on the quantity of jaggery involved. The modulation or variation in the cost price would indisputably have its impact on the turnover on the basis of which sales tax is leviable within the State of Kerala. Therefore, that contention by itself would not come to the aid of the petitioner. On the question whether the disposal of the revision by the second revisional authority was without giving an opportunity of personal hearing to the petitioner, having regard to his application for adjournment, it can be easily noticed that in Ext.P4 revision filed in 1999 barring general grounds, no specific plea based on any specific material which the petitioner wanted to rely as additional evidence was made in Ext.P4 or accompanying it. Therefore, the second revisional authority cannot be found fault in having concluded against the petitioner relying on the petitioner's statement dated 15.10.1997 to which reference has been made by me above.

4. In this context the learned counsel for the petitioner relied on the decision of this court in DEPUTY COMMISSIONER OF SALES TAX (LAW), BOARD OF REVENUE (TAXES), ERNAKULAM V. K.E.KORAH (1998) 6 KTR 575 (KER) (Division Bench), wherein it has been stated in paragraph 7 that the assessing authority has to make an effort to establish that the assessee had actually collected more than the ostensible collections shown in the books of accounts. The issue arising for decision in this case is not whether the assessee had actually collected higher price than shown in his books of accounts in relation to sale within the State of Kerala. The question that formed the issue in the penalty order impugned in this writ petition is the fact that the cost component of the transactions was suppressed by dubious methods shown to have been adopted and such suppression would impair assessment of the taxable turnover as regards the assessee is concerned. Therefore, the aforesaid decision does not govern the facts of this case.

5. Having found that the action of the petitioner has resulted in suppression of the relevant materials to arrive at the assessible turnover of the petitioner, I do not find any jurisdictional error or legal infirmity in the impugned orders in so far as the findings and the decision to impose penalty are concerned. However, I am of the view that ends of justice would be

satisfied if the penalty imposed on the petitioner as per the impugned decisions is reduced by 25%. The impugned orders will stand modified accordingly. No costs.

THOTTATHIL B. RADHAKRISHNAN
Judge

pms